Alphonso Nicholas Faggiolo, 713 Lamp Post Lane. Aston, Pennsylvania 19014 610-818-7167 *Plaintiff*.

DISTRICT COURT OF THE UNITED STATES for the Eastern District of Pennsylvania

Case Number: 2:23-cv-04920

Alphonso Nicholas Faggiolo *Plaintiff*,

vs.

BOROUGH OF RIDLEY PARK, et al., *Defendants*.

PLAINTIFF'S MOTION TO TAKE JUDICIAL NOTICE

Plaintiff submits this Rule 201 - Judicial Notice of the following Adjudicative Facts to the Honorable Joel Slomsky, Presiding Judge for Eastern District of Pennsylvania, pertaining to Plaintiff's complaint docketed with this Court on the 12th day of December 2023, pursuant to Title 42 U.S.C. § 1983, and in accordance with the Federal Rules of Civil Procedure Rule 3, Rule 8(a), (d)(1)(2), (e), Rule 9(c), Rule 10(a)(b)(c) and Rule 11(a)(b):

JUDICIAL NOTICE:

Counterfeit Property Assessments Supplied To The Court

1. Plaintiff requests, pursuant to Federal Rule 201(a)(b)(c)(d) - Judicial Notice of Adjudicative Facts, that the court take judicial notice that on the 9th of January 2024 (Docket Entry 11), attorney Michael F. Schleigh, acting for prothonotary Defendant Mary J. Walk, filed multiple "property record cards" as exhibits, that are purported to be assessments for the Plaintiff's three **non-commercial/non-business** properties, commonly known as 505 Johnson Avenue, Ridley Park, Pennsylvania; 215 Kane Avenue, Ridley Park, Pennsylvania; and 0 Kane Avenue, Ridley Park, Pennsylvania (hereinafter "properties").

2. *It's a FACT* that in a formal Pennsylvania Right to Know Record Request, on the 13th day of June 2019, Plaintiff requested the complete property assessment records, "meaning ALL of the paperwork", the County of Delaware created as purported assessments of the Plaintiff's three non-commercial/non-business properties. See Exhibit A

REQUEST 1 (Item 1): "Provide me the complete property assessments, which means all of the paperwork for the assessments, for the following properties: 713 Lamp Post Lane, Aston, Pennsylvania 19014; 505 Johnson Avenue, Ridley Park, Pennsylvania 19078; and 215 Kane Avenue, Ridley Park, Pennsylvania 19078"... **Alphonso Nicholas Faggiolo (Plaintiff)**

- 3. *It's a FACT* that the County of Delaware FAILED to provide the Plaintiff property assessments pursuant to Pennsylvania Statutes Title 53 § 8842 "Valuation" (b)(1)(iii); and substituted printouts from its Computer-Assisted Mass Appraisal (CAMA) system, which were titled "Property Record Cards", as have been provided to this court by attorney Michael Schleigh, and have been imposed by all named Defendants against the Plaintiff's three non-commercial/non-business properties. See Exhibits B1, B2, B3
- 4. It's a FACT that, on the 3rd of October 2019, the Plaintiff successfully appealed to the Pennsylvania Office of Open Records, due to the County of Delaware's FAILURE to provide any legally and lawfully promulgated property assessment records for the Plaintiff's three non-commercial/non-business properties, pursuant to the actual written laws of the Pennsylvania Legislature. See Exhibit C Page 5

CONCLUSION: "For the foregoing reasons, Requester's appeal is granted in part and denied in part, and the County is required to provide any additional records responsive to Item 1 of the Request. This Final Determination is binding on all parties."… **Pennsylvania Office of Open Records Appeals Officer Jill S. Wolfe, Esq.**

- 5. The County of Delaware <u>FAILED</u> to provide any <u>"additional"</u> assessment records for the Plaintiff's three <u>non-commercial/non-business</u> properties, and instead provided a sworn affidavit from the County of Delaware's Records Coordinator, Anne M. Coogan, verifying that the County had no actual property assessment records, whatsoever, for the Plaintiff's three properties. See Exhibit D
- 6. *It's a Fact* that the "property record cards", for the Plaintiff's three **non- commercial/non-business** properties, provided to this court by attorney Michael Schleigh are not legally and lawfully promulgated property assessments of Plaintiff's three **non-**

<u>commercial/non-business</u> properties, pursuant to Pennsylvania Statutes Title 53 § 8842 – "Valuation of property".

Pennsylvania Statutes Title 53 § 8842 (b)(1) – "Valuation"

(iii) In arriving at the actual value, the following methods <u>must be considered in conjunction</u> <u>with one another</u>: (A) <u>Cost approach</u>, that is, reproduction or replacement, as applicable, less depreciation and all forms of obsolescence; (B) <u>Comparable sales approach</u>, and (C) <u>Income approach</u>.

7. *It's a Fact* that the property record cards provided to this court by attorney Michael Schleigh on the 9th of January 2024 (Docket Entry 11), are <u>COUNTERFEIT</u> documents created by a <u>third-party company</u> doing business as Tyler Technologies, containing UNVERIFIED, arbitrary, vague, and fictitious data, without Tyler Technology having any legal authority to create assessments for the Plaintiff's three <u>non-commercial/non-business</u> properties.

COUNTERFEIT. "In criminal law. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money." State v. McKenzie, 42 Me. 392; U. S. v. Barrett, D.C.N.D., 111 F. 369; DeRose v. People, 64 Colo. 332, 171 P. 359, L.R.A.1918C, 1193; Metropolitan Nat. Bank v. National Surety Co., D.C.Minn., 48 F. 2d 611, 612.

Submitted this 5th day of April 2024.

by_ Alphonso Nicholas Faggiolo

Plaintiff

Certificate of Service

I, Alphonso Nicholas Faggiolo, certify that on the 5th day of April, 2024, a true and correct copy of the above has been electronically mailed to:

 $MICHAEL\ F.\ SCHLEIGH:\ mschleigh@hardinlawpc.net,\ amollai@hardinlawpc.net,\ amoore@hardinlawpc.net$

DONALD E. WIEAND, JR: dew@stevenslee.com, lak@stevenslee.com

KATHERINE H. MEEHAN: meehan@raffaelepuppio.com

NICOLE A. FEIGENBAUM: nicole.feigenbaum@pacourts.us, legaldepartment@pacourts.us

ERNEST S. ANGELOS: eangelos@raffaelepuppio.com, Altieri@raffaelepuppio.com

McNICHOL, BYRNE & MATLAWSKI, P.C. ATTORNEYS AT LAW

Paul D. McNichol * James J. Byrne, Jr. J. Adam Matlawski Kelly S. Sullivan Kelly C. Hayes * Of Counsel:

Raymond J. Peppelman, Jr. Direct Phone: (610) 566-7777

* Licensed to practice in PA and NJ

October 3, 2019

Via Regular Mail &

Email: alfadogmusic@gmail.com

Alphonso Faggiolo 713 Lamp Post Lane Aston, PA 19014

Exhibit A

RE:

Faggiolo v. Delaware County OOR Docket # AP 2019-1049

Dear Mr. Faggiolo:

As you are aware, our office serves as Solicitor to the Del ware County Board of Assessment Appeals and represented the County in the above referenced Office of Open Records Appeal you filed. We are in receipt of the Office of Open Records s September 11, 2019 decision in this matter which granted your appeal, in part, and required the County to provide any additional records responsive to Item 1 of the original Right to K.

In response to the Office of Open Records decision, we are enclosing a true and correct Affidavit from the County's Right to Know Officer which confirms that the County produced all available responsive records to your Request 1, as set forth below when you visited the County Clerks Office and obtained the records on July 19, 2019.

REQUEST 1: Provide me the complete property assessments, which means <u>all</u> of the paperwork for the assessments, for the following properties: 713 Lamp Post Lane, Aston, Pennsylvania 19014; 505 Johnson Avenue, Ridley Park, Pennsylvania 19078; and 215 Kane Avenue, Ridley Park, Pennsylvania 19078.

The County respectfully submits that the attached Affidavit completes the County's

McNICHOL, BYRNE & MATLAWSKI, P.C.

October 3, 2019 Page (2)

obligations under the Right to Know Act and complies with the OOR's September 11th decision. Thank you.

Z allus CV Cash issues

Very Truly Your

Exhibit B1

2023

Map ID: 37-00-01192-00

FAGGIOLO ALPHONSA P FAGGIOLO MARGARET J

CURRENT OWNER

RIDLEY PARK PA 19078 505 JOHNSON AVE

GENERAL INFORMATION Living Units 1
Neighborhood 37R04000
Alternate Id 37-04 -196:000
Vol / Pg 2630/0333
District 37 9 Zoning Class

Property Notes

Class: R-SINGLE FAMILY

Card: 1 of 1

DELAWARE COUNTY, PA

Printed: November 22, 2023

37-00-01192-00 05/09/2018

Market	62,060	117,280	179,340	
Income	0	0	0	
Cost	62,060	118,370	180,430	Manual Override Reason Base Date of Value Effective Date of Value
Appraised	62,060	117,280	179,340	
Assessed	62,060	117,280	179,340	Value Flag MARKET APPROACH s Building:
	Land	Building	Total	Value Flag Gross Building:
	Appraised Cost Income	Assessed Appraised Cost Income 62,060 62,060 62,060 0	Assessed Appraised Cost Income 62,060 62,060 62,060 0117,280 117,280 118,370 0	Assessed Appraised Cost Income 62,060 62,060 62,060 0 117,280 117,280 118,370 0 179,340 179,340 180,430 0

% Complete Permit Information Price Purpose Date Issued Number

62,060 Value Location: 6 Neighborhood or Spot Influence % Land Information Influence Factors Size 5,060 S H H H Spot: Spot: Spot: Type Primary

Source Entrance Information

Other Other Other Informal Hearing No Change No One Home Over 18 Adv Reviewed Entry Code ე | ე SKW **Date** 03/04/20 08/08/18 01/29/97 Validity Old Sale Not Applica Not On Open Market

Deed Reference Deed Type 2630/0333 0000/0000

Sales/Ownership History

Grantee FAGGIOLO ALPHONSA P CLARE E FRAKNER

Price Type 29,000 Transfer Date 11/18/77 01/01/00

RESIDENTIAL PROPERTY RECORD CARD

Situs: 505 JOHNSON AVE

t VIE r

DELAWARE COUNTY, PA	Class: R-SINGLE FAMILY Card: 1 of 1 Printed: November 22, 2023	18 C 18 1	Coutbuilding Data Type Size 1 Size 2 Area Qty Yr Bit Grade Condition Value Det Fr Gar 17 x 18 306 1 1930 C A 1,920	Complex Name Complex Name Condo Model Unit Number Unit Level Unit Parking Model (MH) Model (MH)	Line # Low 1st 2nd 3rd Value 1 7,300
FY RECORD CARD 2023	Parcel ld: 37-00-01192-00	Pear Built 1920 Eff Year Built 1920 Eff Year Built Year Remodeled Amenities In-law Apt Yes Basement # Car Bent Gar 0 FBLA Type Rec Rm Type Rec Rm Type Freplaces Stacks Openings Pre-Fab Full Baths. 1	Half Baths ra Fixtures FixBath4 Bath Type ath Remod ath Remod is hed Area eated Area tion Market Adj Functional Economic	mputations % Good 72 % Good Override Functional Economic % Complete 100 C&D Factor Adj Factor 1 Additions 7,300	Dwelling Value 116,450
T V C RESIDENTIAL PROPERTY RECORD CARD	Situs: 505 JOHNSON AVE	Style Old Style Story height 2 Attic None Exterior Walls Stucco Masonry Trim × Color Basement Full #C. FBLA Size × Rec Rm Size × Rec Rm Size × Ret Type Central Fuel Type Gas System Type Hot Water Redrooms 3 Redrooms 3	No No Xarre X Average GOOD		Ground Floor Area 720 Total Living Area 1,440 Dwel

Entrance Information

01/24/97

DFB

Vacant Or Oby Only Adv Review ed **Entry Code**

Other Other

Source

10/03/18 Date

맞ㅁ

Transfer Date 01/11/00 05/25/77

Price

Type

Validity
Not On Open Market
Not On Open Market

Sales/Ownership History

Deed Reference Deed Type 1970/1831

0000/0000

20	
>2	
13.	
S O	
07	
43	

Situs: 215 KANE AVE

FAGGIOLO ALPHONSO P &

MARGARET JANE 215 KANE AVE

CURRENT OWNER

RIDLEY PARK PA 19078

RESIDENTIAL PROPERTY RECORD CARD

Map ID: 37-00-01211-00

Class: R-RESIDENTIAL VACANT

2023

INFORMATION

District Zoning Vol / Pg Neighborhood 37R04000 Alternate Id Living Units 1970/1831 37 37-03 -675:001 8

Property Notes

Total Acres: .0918 Spot: SF 4,000 Size Influence Factors Location: 6 Neighborhood or Spot Influence %

Primary

Type

Land Information

60,940 Value

Building Total

Assessed

Appraised

Cost

Income

Market

000

Assessment Information

Date Issued Number Price Purpose Permit Information % Complete

Gross Building:

Value Flag COST APPROACH 60,940 60,940 60,940 60,940 Manual Override Reason
Base Date of Value
Effective Date of Value 60,940 60,940 000

Grantee FAGGIOLO ALPHONSO P & MITCHELL SANDRA E

DELAWARE COUNTY, PA

Printed: January 5, 2024

Card: 1 of 1

Exhibit 4

9	25	
	de	
	27.5	
2	107	
	0.	

Situs: 215 KANE AVE RESIDENTIAL PROPERTY RECORD CARD **Dwelling Information** Parcel Id: 37-00-01211-00 2023

Class: R-RESIDENTIAL VACANT

DELAWARE COUNTY, PA

Card: 1 of 1

Printed: January 5, 2024

Ext	nibi	t B2	C 035&:2.3 -3+0-04	D 91 2	902-01-11:5 [06		er e	tn1.12-45 Fille	edd (04//05//	2 4	Pag	æ S	26 fo 19 2
		Total Living Area	Base Price Plumbing Basement Heating Attic Other Features Subtotal		Grade C Condition CDU AVI Cost & Design 0 %Complete		Int vs Ext Cathedral Ceiling ×		Bedrooms Family Rooms Kitchens Total Rooms Kitchen Type Kitchen Remod		Heat Type Fuel Type System Type	Heating & Cooling	Basement FBLA Size × Rec Rm Size ×		Style Story height Attic Exterior Walls Masonry Trim × Color
	Building Notes	Dwelling Value	% Good % Good Override Functional Economic % Complete C&D Factor Adj Factor	Dwelling Computations	C Market Adj Functional AVERAGE Economic % Good Ovr	Grade & Depreciation	Unfinished Area Unheated Area	Adjustments	Full Baths Half Baths Extra Fixtures FixBath4 Bath Type Bath Remod	Room Detail	Stacks Openings Pre-Fab	Cooling Fireplaces	# Car Bs m t Gar FBLA Type Rec Rm Type	Basement	Year Built Eff Year Built Year Remodeled Amenities In-law Apt No
		Line # Low 1st 2nd 3rd	Complex Name Condo Model Unit Number Unit Level Unit Parking Model (MH)	Con					Type Size 1						
		Addition Details Value	Unit Location Unit View Model Make (MH)	Condominium / Mobile nome information					Outbuilding Data Size 2 Area Qty Yr Blt Grade Condition						

Exhibit 4

Entrance Information

SKW **5**

먊

Info At Door Adv Review ed **Entry Code**

Other Other Source

Price Type 66,000

Validity
Excluded From Market
Old Sale Not Applica

Deed Reference Deed Type 1970/1831 608/0016

Grantee FAGGIOLO ALPHONSO P & MITCHELL SANDRA E

Sales/Ownership History

CURRENT OWNER

DELAWARE COUNTY, PA

ap	
ID: 37-0	
0-0121	
0-00	(
	Map ID: 37-00-01210-00

Property Notes	FAGGIOLO ALPHONSO P & MARGARET JANE 215 KANE AVE RIDLEY PARK PA 19078	COLUMN CHARLE
tes	Living Units 1 Neighborhood 37R04000 Alternate Id 37-03-67: Vol / Pg 1970/1831 Zoning 01	(11)
	1 37R04000 37-03-675:000 1970/1831 37	Charles of the second of the s
y's	The state of the s	



Size Influence Factors Influence % Value 7,930 68,120
--

Land Building Total

68,120 92,460 160,580

68,120 92,460 160,580

68,120 93,750 161,870

68,120 92,460 160,580 Market

Manual Override Reason
Base Date of Value
Effective Date of Value

Assessed

Appraised

Cost

Income

Assessment Information

% Compl	Price Purpose	Date Issued Number
	Permit Information	

Value Flag Gross Building:	Value Flag MARKET APPROACH Effective D	Effective Date of Value
	Permit Information	n
Date Issued Number	r Price Purpose	% Complete

Exhibit B3 Casse22223cov90499209JH\$S D0ocumeent1245 Fiiitelc00410059224 Fiagge172061192

Situs: 0 KANEAVE	Parcel Id: 37-00-01210-00	Class: R-SINGLE FAMILY	() () () () () () () () () ()
Dwelling Information	rmation	ED2	600
Bungalow 1 Unfin AlumVinyl	Year Built 1940 Eff Year Built Year Remodeled Amenities	24	B 12 ENCL FRAMÉ PORCH C 16 FRAME OVERHANG D 16 FRAME OVERHANG
Masonry Irim × Color	In-law Apt Yes		d
Basement	ent	36	36 13
Full	#Car Bsm+Gar 0		
Easement rull FBLA Size × Rec Rm Size ×	# Car Bsmt Gar V FBLA Type Rec Rm Type	e.	<u> </u>
Heating & Cooling	Fireplaces		
	Stacks		
Fuel Type Oil System Type W/M Air	Openings Pre-Fab	24	
Room Detail	tail	0)	0)
Bedrooms 2 Family Rooms Kitchens	Full Baths 1 Half Baths 0 Extra Fixtures 2	24	Outbuilding Data
Total Rooms 5 Kitchen Type Kitchen Remod No	FixBath4 Bath Type Bath Remod No	Type Size 1 Size 2	Area Qty Yr Bit Grade Condition Value
Adjustments	nts		
Int vs Ext Same U Cathedral Ceiling ×	Unfinished Area Unheated Area		
Grade & Depreciation	eciation		
Grade C Condition Average CDU AVERAGE Cost & Design 0 % Complete 100	Market Adj Functional Economic % Good Ovr		
Dwelling Computations	outations	Condominium	Condominium / Mobile Home Information
112,900	% Good 69 % Good Override	Complex Name Condo Model	
Heating 0 Heating 9,340 Other Features 0	% Complete 100 C&D Factor 1 Adj Factor 1	Unit Number Unit Level Unit Parking Model (MH)	Unit Location Unit View Model Make (MH)
864			
Iotal Living Area	Dwelling value conce	ine # Low 1st 2nd 3rd V	Addition becans
Building Notes	otes	1 12 8,300 2 16 700	8 6
			00

RESIDENTIAL PROPERTY RECORD CARD

2023

DELAWARE COUNTY, PA



FINAL DETERMINATION

IN THE MATTER OF :

ALPHONSO FAGGIOLO, :

Requester

:

v. : Docket No: AP 2019-1049

DELAWARE COUNTY,
Respondent

INTRODUCTION

Alphonso Faggiolo ("Requester") submitted a request ("Request") to Delaware County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking property assessment records. The County partially denied the Request, stating that the Request is insufficiently specific. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On June 13, 2019, the Request was filed seeking, in pertinent part:

- 1. Provide me complete property assessments, which means ALL of the paperwork for the assessments, for the following properties: [addresses omitted].
 - . . .
- 2. Provide me the statutes, codes or laws that the Board of Assessments, an agency of municipal corporation, is citing, that gives them personal jurisdiction over

me, a man, and subject matter jurisdiction over my private, non-commercial, property.

. . .

On June 20, 2019, the County partially denied the Request, providing access to records responsive to Item 1 of the Request, but denying Item 2 as insufficiently specific. 65 P.S. § 67.703.

On July 3, 2019, the Requester appealed to the OOR challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On July 24, 2019, the County submitted a position statement indicating that responsive records were provided on July 19, 2019, upon payment of duplication costs. The County also argues that Item 2 is insufficiently specific. On July 28, 2019, the Requester submitted position statement arguing, among other things, that he was not provided all records responsive to Item 1 of the Request.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the

request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as "such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa.

Commw. Ct. 2010)). The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request." *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The County failed to provide sufficient evidence that all records responsive to Item 1 of the Request were provided to the Requester

The County argues that it provided access to records responsive to Item 1 of the Request. The Requester acknowledges that he obtained the copies of property assessments from the CAMA system; however, he argues that property assessment records and a report from the CAMA system are different. He argues that there are additional records responsive to the Request that were not provided to him. Although the County asserts that it provided all responsive records to Item 1, it did not support those statements with an affidavit from a person with actual knowledge of the facts asserted. While an affidavit or statement made under the penalty of perjury is competent evidence to sustain an agency's burden of proof, Sherry v. Radnor Twp. Sch. Dist., 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); Moore v. Office of Open Records, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010), unsworn statements may not be relied upon as competent evidence to withhold records under the RTKL. See Hous, Auth. of the City of Pittsburgh v. Van Osdol, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that unsworn statements of counsel are not competent evidence); City of Philadelphia v. Juzang, July Term 2010, No. 2048 (Phila. Com. Pl. June 28, 2011) ("Because the letter written by City's counsel is a legal brief, it cannot be . . . evidence at all"). Merely stating that all records were provided to the Requester is insufficient to meet an agency's burden of proof under the RTKL. Accordingly, the County has not met its burden of proving that it provided all records responsive to Item 1 of the Request. See Hodges, 29 A.3d at 1192.¹

¹ The OOR is mindful that an agency cannot produce records that do not exist within its possession, custody or control and, accordingly, is not ordering the creation of any records sought in the Request. Absent the County providing a sufficient evidentiary basis that no other records exist, the OOR will order disclosure of responsive public records.

2. Responding to Item 2 of the Request would require legal research

Item 2 states "provide me the statutes, codes, or laws that the Board of Assessment...is citing that gives them personal jurisdiction over me... and subject matter jurisdiction over my private, non-commercial, property." An agency cannot be required to perform legal research for a requester. The Commonwealth Court has found that "[a] request that explicitly or implicitly obliges legal research is not a request for a specific document; rather it is a request for someone to conduct legal research with the hopes that the legal research will unearth a specific document that fits the description of the request." *Askew v. Pa. Office of the Governor*, 65 A.3d 989, 993 (Pa. Commw. Ct., 2013); *see also* 65 P.S. § 67.703.

Here, the County argues that the Item 2 is insufficiently specific and does not seek a specific public record. Item 2 asks the County to identify specific statutes and laws that impose jurisdiction of the Board of Assessments over the Requester. Asking an agency to identify statutes and laws, and to make legal judgments about which govern in a particular situation, would compel an agency to conduct legal research. Accordingly, Request is insufficiently specific. *See Saunders v. Penn Hills Sch. Dist.*, OOR Dkt. AP 2019-0108, 2019 PA O.O.R.D LEXIS 26.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part** and **denied in part**, and the County is required to provide any additional records responsive to Item 1 of the Request. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final

Determination, any party may appeal to the Delaware County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and

should not be named as a party.² This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: September 11, 2019

/s/ Jill S. Wolfe

APPEALS OFFICER
JILL S. WOLFE, ESQ.

Sent via email to: Alphonso Faggiolo;

Kelly Sullivan, Esq. Anne Coogan

² See Padgett v. Pa. State Police, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

THE COUNTY OF DELAWARE ATTESTATION THAT AGENCY PROVIDED ALL RESPONSIVE RECORDS

Name of Requester:

Anthony Faggiolo

Records Requested:

Provide me the complete property assessments, which means all of the paperwork for the assessments, for the following properties: 713 Lamp Post Lane, Aston, Pennsylvania 19014; 505 Johnson Avenue, Ridley Park, Pennsylvania 19078; and 215 Kane Avenue,

Ridley Park, Pennsylvania 19078.

Appeal Caption:

OOR AP NO. 2019-1049

I, Anne Coogan, hereby declare under the penalty of perjury, pursuant to 18 Pa.C.S. § 4904, that the following statements are true and correct based upon my personal knowledge information and belief:

- 1. I serve as the Open Records Officer for the County of Delaware ("Agency") and am responsible for responding to Right-to-Know requests filed with the Agency.
- 2. In my capacity as the Open Records Officer, I am familiar with the records of the Agency.
- 3. Upon receipt of the request, I conducted a thorough examination of files in the possession, custody and control of the Agency for records responsive to the request underlying this appeal, specifically I requested John VanZelst, Assessment Manager, to provide complete copies of the assessment paperwork for the three (3) identified Delaware County properties. I received six (6) pages of documents from Mr. VanZelst, two pages for each of the identified properties. Thereafter, I met with Mr. VanZelst and the Requestor on Friday, July 19, 2019. At the July 19, 2019 meeting, Mr. Faggiolo was provided copies of the six (6) pages of responsive records additionally Mr. Faggiolo was able to ask questions about the County assessment system, in general.
- 4. After conducting a good faith search of the Agency's files and inquiring with relevant Agency personnel, I identified all records within the Agency's possession, custody or control that are responsive to the request and provided them to the requester during a meeting on July 19, 2019.

Exhibit D

Date: October 1, 2019

Signature: Unn M. Coogan
Anne M. Coogan
Open Records Officer

Open Records Office County of Delaware

Subscribed and sworn to before me

this 1st day of Octo

2019

Notary Public

Commonwealth of Pennsylvania - Notary Seal GRACE M SPECK - Notary Public

Delaware County

My Commission Expires Aug 3, 2022

Commission Number 1226571